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PART III

LEGAL SUPPLEMENT.

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CRIMINAL REVISION.

Before Richardson and Shams-ul-Huda JJ.

OHI BHUSAN ADHIKARI

versus

EMPEROR.*

Misjoinder—property received by receivers separately and at different times—Joint trial of receivers legality of—Criminal breach of trust at one place and dishonest receipt subsequently at another place—Joint trial of thief and receivers, legality of—Some of the offences charged not committed in the same transaction—Illegality vitiating the whole trial—Criminal Procedure Code (Act V of 1898),s. 239.

Where property is stolen, and the proceeds of the theft are received by different persons separately and at different times, they cannot be tried together.

Abdul Majid versus *Emperor* (1) followed.

The joint trial of two receivers who had received stolen cloths separately and at different times was therefore, *held* illegal.

When goods are stolen and subsequently received by the receiver, the legality of the joint trial of the thief and receiver depends upon whether the theft and dishonest receipt formed parts of the same transaction or not.

Bishnu Banwar versus *Empress* (2) followed.

The joint trial of the petitioners for criminal breach of trust committed at B and of two receivers who received the property subsequently at J, was held bad in law.

To justify a joint trial of several persons all the offences charged must have been committed by them in the one and the same transaction. If any of the

offences so charged were not committed in the same transaction, the whole trial is illegal, under s. 239 of the Criminal Procedure Code, for misjoinder.

*Criminal Revision No. 1026 of 1918, against the order of R. Garlick, Sessions Judge of Dinajpur, dated September 21, 1918.

(1) (1906) I. L. R. 33 Calc. 1256. (2) (1896) I. C. W. N. 35.

The petitioners were assistants in a cloth shop called "Lakshmi Bhandar" in Balurghat in the district of Dinajpur. On the 19th January 1918 the local manager of the shop, Bholanath Bhuttacharjee, laid an information at the Balurghat *thana* that the petitioners had, on dates between May and November 1917, removed from the shop and criminally misappropriated moneys, cloths and other articles, altogether to the value of Rs. 1,000 to Rs. 1,200, that they had disposed of some of the things in Balurghat and had sent the remainder on various dates to their homes in Basubari and Jalangi, both within the jurisdiction of the Jalangi *thana*, in the Murshidabad district. The police held an investigation and searched the houses of the petitioners on the 21st January 1918. In the house of the petitioner, Ohi Bhusan, at Basubari, were found a Jacket (Ex. I) a pair of *dhoties* (Ex.II), and a frock (Ex. VII). A frock (Ex. III) and an *alwan* (Ex. V) were discovered in the house of the petitioner, Ramanath Dey, at Jalangi, in which his father Ram Gopal Dey resided. In the same house were found some letters written between July and November 1917 by Ramanath to his father advising the despatch of parcels of cloth. A tailor further produced a pair of *dhoties* which he said he had received from the petitioner Ramanath. The house of Kali Narain Das, at Jalangi, was also searched, and in it were found letters, of different dates from the petitioner, Ohi Bhusan, informing him of the despatch of money and parcels of cloth. The exact dates on which each article was misappropriated were not shown by the evidence.

The petitioners together with Kali Narain and Ram Gopal were ultimately placed before the Subdivisional Officer of Balurghat and tried jointly. The Magistrate framed charges under s. 403 of the Penal Code, against the petitioners, alleging criminal breach of trust in respect of Exs. I, II, III, IV, V and VII committed between May and November 1917. He further charged Kali Narain and Ram Gopal Dey under sections 408 and 109, Indian Penal Code, with abetting Ohi Bhusan and Ramanath, respectively, in the commission of criminal breach of trust of the cloths of the shop between May and November 1917 by aiding in the disposal of them. He convicted the petitioners under section 408 of the Penal Code, on the 20th June 1908, and sentenced each to six months' rigorous imprisonment. Kali Narain and Ram Gopal were convicted under sections 408 and 109 of the Penal Code, and sentenced to imprisonment till the rising of the Court and a fine of Rs. 60 each.

On appeal, the Sessions Judge of Dinajpur upheld the conviction and sentences passed on the petitioners, holding that they had acted in concert and that their joint trial was legal. As to the other two appellants, he was of opinion that their offences, if any, amounted to dishonestly receiving stolen property under section 411 of the Penal Code, and not to abetment under sections 408 and 109. He further held that their joint trial with the petitioners was bad in law and acquitted them on 21st September 1918.

The petitioners then moved the High Court and obtained the present Rule.

Babu Manmatha Nath Mukerjee, for the petitioners. The joint trial of the receivers is illegal: see *Abdul Majid* v. *Emperor* (1). The petitioners could not be legally tried with the receivers, the transaction, not being the same with regard to all the accused. Refers to *Bishnu Banwar* v. *Empress* (2). If there is misjoinder as to the receivers the whole trial is bad.

No one for the opposite party.

RICHARDSON AND SHAMS-UL-HUDA JJ. The two petitioners, Ohi Bhusan Adhikari and Ramanath Dey, were assistants in a cloth shop. The case for the prosecution is that they misappropriated cloth belonging to their employer. They were tried along with two other persons, Ram Gopal and Kali Narain. It was alleged that Kali Narain had dishonestly received stolen cloth sent to him by Ohi Bhusan, and that Ram Gopal had dishonestly received stoln cloth sent to him by Ramanath. No charge of conspiracy was framed against the four men. The petitioners were charged under section 408 of the Penal Code with the offence of Criminal breach of trust by a clerk or servant. Kali Narain was charged with abetting the commission of that offence by Ohi Bhusan, and Ram Gopal with abetting its commission by Ramanath. The trial ended in the conviction of all the accused on the charges framed against them.

The case then came before the Sessions Judge on appeal. The learned Sessions Judge very properly observed that there was no charge of conspiracy. He further held that if Kali Narain and Ram Gopal had committed any offence, it was the offence of dishonestly receiving stolen property and that their conviction for abetment could not be supported. So far as they were concerned he held that the trial was bad for misjoinder of charges, and on that ground he acquitted them.

As to the petitioners, the Sessions Judge found that they had acted in concert, and he upheld their convictions under section 408.

The petitioners obtained this Rule on two grounds; *first*, on the ground that the joint trial of the four accused persons was illegal; and, *secondly*, on the ground that certain statements made by Ramanath have been wrongly treated as confessions and wrongly admitted in evidence.

We are of opinion that the Rule must be made absolute on the first ground, and that being so, it will not be necessary for us to deal with the second ground.

It seems clear that if there was a misjoinder of charges, it affected the legality of the whole trial. The trial in view of the point which arises, cannot be a bad trial of Kali Narain and Ram Gopal and a good trial of the petitioners.

The whole question is whether the offences charged were committed in the course of the same transaction within the meaning of section 239 of the Criminal Procedure Code. In this Court judicial opinion is in favour of the view that where property is stolen, and the proceeds of the theft are separately received at different times by different persons, these persons cannot be tried together: *Abdul Majid* v. *Emperor* (1). It has also been held that when goods are stolen and subsequently received by a receiver, it will depend on the circumstances whether the theft and the receipt are parts of one and the same transaction, so that the thief and the receiver can be tried together: see *Bishnu Banwar* v. *Empress* (2).

In the present case if the offences charged against Kali Narain and Ram Gopal were not committed in the same transaction, those offences and the offences charged against the petitioners cannot all have been committed in the same transaction.

The result is that the conviction of the petitioners and the sentences passed in them must be set aside. The petitioners will be released from their bail bonds.

It will be open to the proper authority, if so advised, to institute further proceedings against the petitioners.

Rule absolute.

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